

REMARKS

Claims 1-4 are pending. By this Amendment, no claims are amended, cancelled, or added, and amendment to the specification (abstract) is made.

Objection to Specification

The specification was objected to by the Examiner in the Office Action dated February 3, 2009 by virtue of the language used in the abstract. In consideration of the Examiner's objection, Applicants have amended the abstract. Applicants believe the abstract as amended is supported by the original disclosure and contains no new matter. Applicants also believe the abstract as amended meets the proper form requirements, and furthers the object of the abstract to generally and summarily describe the invention to the average reader. Accordingly, Applicants respectfully request reconsideration of the Examiner's objection to the specification as it applies to the language used in the abstract.

Claim Rejections – 35 U.S.C. § 103(a)

Claims 1-3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ikeda et al., JPO 2003-184902¹, in view of Imamura et al., U.S. Patent No. 5,605,981. Claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ikeda et al., JPO 2003-184902, in view of Imamura et al., U.S. Patent No. 5,605,981, as applied to claim 1 and further in view of Shiraishi et al., U.S. Patent No. 6,150,438. Applicants respectfully request withdrawal of the rejection, as a *prima facie* case of obviousness has not been established.

¹ Applicants' respectfully note that the Ikeda et al. reference's application number is 2003-184902, while its publication number is 2005-014499, which published on January 20, 2005.

A *prima facie* case of obviousness has not been established, as the Examiner's reliance upon the Ikeda et al. reference as the primary prior art reference for the rejections to claims 1-4 is improper. The Ikeda et al. reference is not a prior art reference to the claimed invention. With respect to an obviousness rejection under 35 U.S.C. § 103, "[b]efore answering *Graham's* 'content' inquiry, it must be known whether a patent or publication is in the prior art under 35 U.S.C. § 102." *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1568, 1 USPQ2d 1593, 1597 (Fed. Cir.), *cert. denied*, 481 U.S. 1052 (1987); MPEP § 2141.01 (I). And in determining whether a patent or publication is in the prior art under 35 U.S.C. § 102, "[t]he Examiner must determine the issue or publication date of the reference so that a proper comparison between the application and reference dates can be made." MPEP § 706.02(a)(I). When such is done, the Ikeda et al. reference does not constitute prior art to the instant application under 35 U.S.C. § 102; and therefore, it also is not a prior art reference under 35 U.S.C. § 103(a).

As already recognized by the USPTO, Applicants have perfected their priority claim for their Japanese patent application. Applicants' application has a § 371(c)(1), (2), (4) date of September 18, 2006, an international filing date of March 17, 2005, and properly claims foreign application priority to Japanese Application JP 2004-076516, which was filed March 17, 2004. The Japanese publication date of the Ikeda et al. reference was January 20, 2005. See Ikea et al. reference. Therefore, Applicants' application claims priority (March 17, 2004) before the publication of the Ikea et al. reference (January 20, 2005). Thus, the Ikeda et al. reference is not a prior art reference under 35 U.S.C. § 102, and it also does not constitute a prior art reference under 35 U.S.C. § 103(a). Accordingly, Applicants' respectfully request withdrawal of the rejection of claims 1-4, as a *prima facie* case of obviousness has not been established.

Applicants also respectfully note that the Ikeda et al. reference is a Japanese publication, which is published in the Japanese language. The Examiner failed to obtain a required translation of the Ikeda et al. and make the record clear as to the precise facts or language the Examiner was relying upon in support of the rejection. See MPEP 706.02 (II) (“If the document is in a language other than English and the examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection.”). In other words, the exact translated language the Examiner was relying upon for its rejections was not clearly made of record as required. Accordingly, Applicants’ respectfully request withdrawal of the rejection of claims 1-4 on this basis, as a *prima facie* case of obviousness has not been established.

Based upon the foregoing, Applicants are not presenting additional arguments with respect to the patentability of the claims in light of the cited references, although Applicants do not acquiesce to any of the rejections and reserve the right to raise additional arguments with respect to the patentability of such claims. Also, Applicants do not comment here on the suitability of combining or modifying the cited references, but instead reserve such right. Thus, reconsideration and withdrawal of the rejection of claims 1-4 are respectfully requested.

Conclusion

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Application No. 10/593,220

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Stender", with a large, stylized loop at the end.

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